

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CATHERINE V. SIKORSKI and JOHN SIKORSKI,

Docket No. 07 Civ. 3906
(CLB) (LMS)

Plaintiffs,

NOTICE OF MOTION

- against -

FULTON CHEVROLET-CADILLAC CO., INC.,
FULTON CHEVROLET CO., INC., HIGH POINT
CHEVROLET, INC., SIEBA, LTD., FULTON/HIGH
POINT CHEVROLET GROUP HEALTH BENEFIT
PROGRAM, AVEMCO INSURANCE COMPANY,
And AVEMCO INSURANCE AGENCY, INC.,

Defendants.
-----X

S I R S :

PLEASE TAKE NOTICE, that upon the annexed Declaration of Peter L. Contini, Esq., dated the 19th day of July, the Memorandum of Law, and upon all pleadings and proceedings heretofore had herein, the undersigned will move this Court, before the Honorable Charles L. Brieant, at the courthouse located at 300 Quarropas Street, White Plains, New York, on the 14th day of September, 2007, at 10:00 a.m. in the forenoon of that day, or as soon thereafter as counsel may be heard, for an Order pursuant to Fed.R.Civ.P. 26(c) staying all discovery proceedings in this matter, and for such other and further relief as the court may deem just and proper.

Dated: Garden City, New York
 July 19, 2007

Respectfully submitted,

L'ABBATE, BALKAN, COLAVITA
& CONTINI, L.L.P.

By: 

Peter L. Contini, Esq. (PC 1069)
Attorneys for Defendant
Sieba Ltd.
1001 Franklin Avenue, Third Floor
Garden City, New York 11530
(516) 294-8844

TO: Jeffrey S.E. Sculley, Esq.
RIDER, WEINER & FRANKEL, P.C.
Attorneys for Plaintiff
655 Little Britain Road
New Windsor, New York 12553
(845) 562-9100

Richard Golden, Esq.
BURKE, MIELE & GOLDEN, LLP
Attorneys for Defendants
Fulton Chevrolet-Cadillac Co., Inc.,
Fulton Chevrolet Co., Inc.,
Highpoint Chevrolet, Inc. and
Fulton/High Point Chevrolet
Group Health Benefit Program
30 Matthews Street, Suite 303A
P. O. Box 216
Goshen, New York 10924
(845) 294-4080

Steven Kent, Esq.
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP
Attorneys for Defendants
Avemco Insurance Company and
Avemco Insurance Agency, Inc.
150 East 42nd Street
New York, New York 10017-5639
(212) 490-3000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CATHERINE V. SIKORSKI and JOHN SIKORSKI,

Docket No. 07 Civ. 3906
(CLB) (LMS)

Plaintiffs,

- against -

**DECLARATION IN
SUPPORT OF MOTION
FOR A STAY**

FULTON CHEVROLET-CADILLAC CO., INC.,
FULTON CHEVROLET CO., INC., HIGH POINT
CHEVROLET, INC., SIEBA, LTD., FULTON/HIGH
POINT CHEVROLET GROUP HEALTH BENEFIT
PROGRAM, AVEMCO INSURANCE COMPANY,
And AVEMCO INSURANCE AGENCY, INC.,

Defendants.
-----X

PETER L. CONTINI, being an attorney duly admitted to practice law before this court
declares the following statements to be true under penalty of perjury:

1. I am a member of L'Abbate, Balkan, Colavita & Contini, LLP, attorneys for
defendant, Sieba, Ltd., and I submit this declaration in support of the motion by Sieba, Ltd. for an
order staying all discovery proceedings until such time as the pre-answer motion of Sieba, Ltd. to
dismiss the complaint against it has been decided. Concurrently with this motion we are filing a
pre-answer motion to dismiss under Fed.R.Civ.P. 12(b)(6) and we respectfully refer this court to
that motion for our arguments in support of our motion to dismiss. In addition, we respectfully
refer this court to our accompanying memorandum of law on this motion for authority in support
of the relief requested herein.

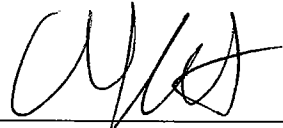
2. The plaintiff has proposed a Civil Case Discovery Plan and Scheduling Order to
which we have consented, without prejudice to our rights to file a pre-answer motion to dismiss

and the present motion for a stay. A copy of the Civil Case Discovery Plan and Scheduling Order which is being proposed by the plaintiff's attorney is attached as Exhibit "A". The order provides for interrogatories and document requests to be served no later than October 5, 2007 and for depositions to be completed by November 30, 2007. Our pre-answer motion to dismiss together with this motion for a stay are being submitted to this court for a determination on September 14, 2007 which leaves very little time for this court to decide the motion prior to substantial obligations being imposed on the parties to engage in disclosure proceedings. Sieba, Ltd. is located in Endicott, New York which is west of Binghamton, New York. There are three or four employees who have familiarity with the events underlying the claim of Catherine Sikorski for medical benefits. The company has only 21 employees. It would be unduly burdensome for those employees to have to travel to downstate New York to complete depositions in this case within the time frame provided in the Scheduling Order, and it would be unduly disruptive to Sieba, Ltd. to have three or four of its employees lose a day or two of work.

3. We believe that our motion to dismiss is well founded in fact and in law. As set forth in our accompanying motion to dismiss, Sieba, Ltd. is neither a plan administrator nor plan sponsor and, therefore, is not a proper party to this lawsuit. That is established by the employee benefit plan as well as the third-party administration service contract entered into between Sieba and Fulton/Highpoint Chevrolet. We respectfully submit that, in light of the documentary evidence and the established law on this issue, Sieba, Ltd. should not have to have its office substantially disrupted to produce witnesses to be deposed in this case. Sieba, Ltd. is a small company and its operations would be crippled to produce witnesses with relevant information pertaining to this case. Accordingly, based on the strength of our motion to dismiss and the accompanying memorandum

of law which sets forth authority to grant this motion for a stay, we respectfully request that discovery proceedings in this matter be stayed until such time as the motion to dismiss has been decided.

Dated: Garden City, New York
July 19, 2007

A handwritten signature in black ink, appearing to read 'P. Contini', is written above a horizontal line.

PETER L. CONTINI, ESQ. (PC 0169)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

KAREN R. LUCERO, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at Nassau County, New York.

That on the 19th day of July, 2007, deponent served the within **MOTION FOR A STAY OF DISCOVERY PROCEEDINGS** upon:

Jeffrey S.E. Sculley, Esq.
RIDER, WEINER & FRANKEL, P.C.
Attorneys for Plaintiff
655 Little Britain Road
New Windsor, New York 12553
(845) 562-9100

Richard Golden, Esq.
BURKE, MIELE & GOLDEN, LLP
Attorneys for Defendants
Fulton Chevrolet-Cadillac Co., Inc.,
Fulton Chevrolet Co., Inc.,
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Avemco Insurance Agency, Inc.
150 East 42nd Street
New York, New York 10017-5639
(212) 490-3000

the attorney(s) for the respective parties in this action, at the above address(es) designated by said attorney(s) for that purpose by depositing same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.


KAREN R. LUCERO

Sworn to before me this 19th day of
July, 2007.


Notary Public

PETER L. CONTINI
Notary Public, State of New York
No. 4637417
Qualified in Suffolk County
Commission Expires July 31, 2019